



C.M.A.No.1440 of 2022
and C.M.P.No.10561 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1440 of 2022
and C.M.P.No.10561 of 2022

Antony Peter Leo, ...Appellant

Vs.

Annes ...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Court Act, against the fair and decretal order of the Learned V-Additional Family Court, Chennai dated 30.10.2021 in I.D.O.P.No.2451 of 2018.

For Appellant : Mr.T.Sivagnanasambadan
For Respondent/Caveator : Mr.V.M.Venkatramana



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J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The above Civil Miscellaneous Appeal is filed against the order passed in I.D.O.P.No.2451 of 2018 dated 30.10.2021 by the learned V Additional Family Court Judge, Chennai.

2(a).The Appellant filed a petition for Divorce under Section 10(1) (ix) & (x) of the Indian Divorce Act praying for divorce on the ground of cruelty and desertion and non consummation of marriage. The appellant had alleged that differences arose between him and the respondent. The respondent never allowed the appellant to have physical relationship and hence, the marriage was not consummated. He has made various allegations with regard to cruelty and desertion.

(b) The respondent herein filed a counter denying the allegations made by the appellant and also stated that it was the appellant who was guilty of cruelty, desertion and non-consummation of the marriage. She prayed for divorce on the ground that she made a Counter Claim for Divorce making allegations against the appellant. She made a counter claim for divorce making



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allegations against the appellant. She also prayed for permanent alimony of Rs.91,91,000/- (Rupees Ninety One Lakhs Ninety One Thousand only)

(c) The learned Trial Judge found that the Appellant had not established the desertion of the respondent and infact it is appellant who deserted at the respondent. Hence, the learned Judge after discussing the evidence and pleadings on record granted Divorce on the basis of the counter claim made by the respondent and dismissed I.D.O.P.No.2451 of 2018 filed by the Appellant. The learned Trial Judge also found that the respondent was entitled to permanent alimony of Rs.72,00,000/- (Seventy Two Lakhs only)

3. Aggrieved by the dismissal of his Divorce Petition and grant of alimony to the respondent, the appellant has preferred the above appeal.

4. Heard, Mr.T.Sivagnanasambandan for the appellant and Mr. V.M.Venkatramana for the respondent.

5. During the course of the arguments, the learned counsel for the appellant submitted that since the Divorce Decree has been passed on the



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counter claim of the respondent, he would not press this appeal with regard to the dismissal of his Divorce Petition in I.D.O.P.No.2451 of 2018 and made an endorsement to that effect. However, he is aggrieved by the grant of permanent alimony of Rs.72,00,000/- (Rupees Seventy Two Lakhs only) to the respondent. The learned counsel for the appellant submitted that though both the parties have let in evidence with regard to status of the parties and filed affidavit of assets and liabilities, the learned Judge has not discussed the assets and liabilities and not furnished reasons for holding that the appellant is liable to pay a sum of Rs.72,00,000/- (Rupees Seventy Two Lakhs Only) as permanent alimony to the respondent.

6.The learned counsel for the respondent submitted that though there is no discussion as to how the learned judge arrived at Rs.72,00,000/- (Rupees Seventy Two Lakhs only) as permanent alimony to the respondent, he has produced evidence to show that the respondent is entitled for Rs.91,91,000/- (Rupees Ninety One Lakhs Ninety One Thousand only) as claimed in her counter claim.



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7.We find that the trial Judge has passed a decree of divorce on the basis of the Counter claim of the respondent. The Appellant's petition for divorce has been dismissed. The learned counsel for the appellant submitted that though he had challenged the order of the trial Judge dismissing his divorce petition, he would confine his submissions only with regard to the quantum of alimony granted to the respondent. The learned counsel also made an endorsement to that effect. In view of the same, the order passed by the learned Judge dismissing the I.D.O.P.No.2451 of 2018 is confirmed.

8.As regards alimony, we find that no reason has been furnished by the learned Trial Judge for fixing Rs.72,00,000/- (Rupees Seventy Two Lakhs only) as permanent alimony payable to the respondent. The learned Judge has merely stated that the parties have filed affidavit of assets and liabilities and passed the following order :

“Considering the Medical expenses of the respondent the petititioner is directed to pay permanent alimony. The respondent is entitled to maintenance under Section 37 of the Divorce Act, 1869 to the tune of Rs.72,00,000/- as permanent alimony.”



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9. Apart from the above, we see that there is no discussion as to how the learned Judge has arrived at Rs.72,00,000/- (Rupees Seventy Two Lakhs only) as permanent alimony payable to the respondent. The details of the affidavits of assets and liabilities have also not been elicited in the order passed by the learned Judge. Therefore, we are of the view that this is a fit case to direct the learned Judge to consider the quantum of alimony afresh on the basis of the evidence let in by the parties and the affidavit of assets and liabilities and giving reasons for justifying the quantum.

10. Hence, the direction to pay the permanent alimony of Rs.72,00,000/- (Rupees Seventy Two Lakhs only) to the respondent passed in I.D.O.P.No.2451 of 2018 alone is hereby set-aside. The other aspects of the order are confirmed. Therefore, we remand I.D.O.P.No.2451 of 2018 to the learned V Additional Judge Court to decide the quantum of alimony to be granted to the respondent. The decree of Divorce granted in I.D.O.P.No.2451 of 2018 on the basis of Counter Claim to the respondent shall remain undisturbed. It is also made clear that it is open for both the parties to let in evidence justifying their respective claims on the permanent alimony, if so advised.



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11.Both the learned counsel appearing for the appellant as well as the respondent prayed for speedy disposal of the IDOP No. 2451 of 2018 with regard to permanent alimony.

12.In view of the above submissions made by the learned counsels, the learned V Additional Judge, Family Court, Chennai is directed to dispose of the I.D.O.P.No.2451 of 2018 with regard to permanent alimony, as expeditiously as possible, in any event, within a period of three (3) months from the date of receipt of copy of this Judgment.

13.With the above observations, Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

[V.M.V.,J]

[S.M.,J]

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To

- 1.The learned V Additional Family Court,
Chennai.
- 2.The Section Officer
VR Section
High Court
Madras.

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